

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

Darryl L. Cook,)	Civil Action No. 0:12-216-MGL-PJG
)	
Plaintiff,)	
)	
vs.)	ORDER AND OPINION
)	
United States of America,)	
)	
Defendant.)	

Plaintiff Darryl L. Cook ("Plaintiff"), a federal prisoner proceeding *pro se*, filed this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 ("FTCA") against the United States of America ("Defendant"). (ECF No. 1.) Defendant moves to dismiss this action asserting that it is duplicative of a case filed by Plaintiff which was recently decided by another Judge of this court. *See Cook v. United States*, C/A No. 0:11-0320-RMG-PJG.

In *Cook v. United States*, Civil Action No. 0:11-0320-RMG-PJG, Defendant filed a Motion for Summary Judgment. (ECF No. 53.) Defendant asserted that Plaintiff's back injury claim was precluded under the FTCA and Plaintiff had failed to state a claim upon which relief can be granted. (*Id.*) Defendant argues that this case should be dismissed, because the issue presented here is identical to the companion case, *Cook v. United States*, Civil Action No. 0:11-0320-RMG-PJG.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) D.S.C. this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. On September 28, 2012, Magistrate Judge Gossett issued a Consolidated Report and Recommendation in Civil Action 0:11-3210-RMG-PJG and in this action

recommending *inter alia* that the Court grant Defendant's Motion to Dismiss (ECF No. 36) as it is duplicative of his previously filed case. (ECF No. 36.) The Report sets forth in detail the relevant facts and legal standards on this matter which the court incorporates herein without a recitation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made.

On October 16, 2012, Plaintiff filed timely objections to the Magistrate Judge's Report and Recommendation. (ECF No. 38.) Although Plaintiff filed several objections, the court finds that Plaintiff's objections are not specific but merely restatements of the arguments made in his initial filings, only set forth negative assertions against the Magistrate Judge and the United States Attorney, and do not alert the court to any matters that were erroneously considered by the Magistrate Judge. Moreover, Plaintiff fails to direct the court to any evidence in the record to support his contentions that the Magistrate Judge erred in her decision to recommend the grant of summary judgment to Defendant. Objections to the Report and Recommendation must be specific. In the absence of specific objections to the Magistrate Judge's Report and Recommendation, this court is not required to give any explanation for adopting the recommendation. See *Camby v.*

Davis, 718 F.2d 198, 199 (4th Cir.1983).

Accordingly, after a thorough review of the record, the applicable law, the Magistrate Judge's Report and Recommendation and Plaintiff's objections, the Court finds the Magistrate Judge's recommendation to be proper. The Court overrules Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. For the reasons stated in the Consolidated Report and Recommendation, Defendant's Motion to Dismiss is **GRANTED** and this case is **DISMISSED** as duplicative.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
November 7, 2012